

1 LYSSA S. ANDERSON  
2 Nevada Bar No. 5781  
3 KAEMPFER CROWELL RENSHAW  
4 GRONAUER & FIORENTINO  
5 8345 West Sunset Road, Suite 250  
6 Las Vegas, Nevada 89113  
7 Telephone: (702) 792-7000  
8 Fax: (702) 796-7181  
9 [landerson@kcnvlaw.com](mailto:landerson@kcnvlaw.com)

10 Attorneys for Defendants

11 UNITED STATES DISTRICT COURT

12 DISTRICT OF NEVADA

13 DR. TAM NGUYEN,  
14 Plaintiff,  
15 vs.  
16 LAS VEGAS METROPOLITAN POLICE  
17 DEPARTMENT, a political subdivision of the  
State of Nevada; Police Officer NAKAGAWA  
(LVMPD #5476), individually and as police  
officer employed by the Las Vegas  
Metropolitan Police Department; Police Officer  
GEIGER (LVMPD #9864), individually and as  
police officer employed by the Las Vegas  
Metropolitan Police Department; POLICE  
OFFICER JOHN DOES I-XX; and JOHN  
DOES I-XX, inclusive,

18 Defendants.

19 Case No. 2:12-cv-01527-GMN-GWF

20 **DEFENDANTS' ANSWER TO  
21 PLAINTIFF'S COMPLAINT**

22 Defendants Las Vegas Metropolitan Police Department, Police Officer Nakagawa, and  
Police Officer Greiger ("Answering Defendants"), by and through their counsel, Kaempfer  
23 Crowell Renshaw Gronauer & Fiorentino, and for their answers to Plaintiff's Complaint on file  
herein, answers, denies and alleges as follows:

24 //./.

## **PARTIES**

1. Answering Paragraph 1 of Plaintiff's Complaint, Answering Defendants are  
without knowledge or information sufficient to form a belief as to the truth of the allegations  
contained in said paragraph and therefore deny the same.

5           2. Answering Paragraph 2 of Plaintiff's Complaint, Answering Defendants admit the  
6 allegations contained therein.

7           3.       Answering Paragraph 3 of Plaintiff's Complaint, Answering Defendants admit the  
8 allegations contained therein.

9           4.       Answering Paragraph 4 of Plaintiff's Complaint, Answering Defendants admit the  
10 allegations contained therein.

11       5. Answering Paragraph 5 of Plaintiff's Complaint, Answering Defendants are  
12 without knowledge or information sufficient to form a belief as to the truth of the allegations  
13 contained in said paragraph and therefore deny the same.

14       6. Answering Paragraph 6 of Plaintiff's Complaint, Answering Defendants are  
15 without knowledge or information sufficient to form a belief as to the truth of the allegations  
16 contained in said paragraph and therefore deny the same.

## **FACTS COMMON TO ALL CAUSES OF ACTION**

18       7. Answering Paragraph 7 of Plaintiff's Complaint, Answering Defendants admit the  
19 allegations contained therein.

20        8.      Answering Paragraph 8 of Plaintiff's Complaint, Answering Defendants are  
21 without knowledge or information sufficient to form a belief as to the truth of the allegations  
22 contained in said paragraph and therefore deny the same.

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1           9. Answering Paragraph 9 of Plaintiff's Complaint, Answering Defendants are  
2 without knowledge or information sufficient to form a belief as to the truth of the allegations  
3 contained in said paragraph and therefore deny the same.

4           10. Answering Paragraph 10 of Plaintiff's Complaint, Answering Defendants are  
5 without knowledge or information sufficient to form a belief as to the truth of the allegations  
6 contained in said paragraph and therefore deny the same.

7           11. Answering Paragraph 11 of Plaintiff's Complaint, Answering Defendants are  
8 without knowledge or information sufficient to form a belief as to the truth of the allegations  
9 contained in said paragraph and therefore deny the same.

10          12. Answering Paragraph 12 of Plaintiff's Complaint, Answering Defendants allege  
11 that the allegations contained therein call for non-factual legal conclusions and Answering  
12 Defendants are therefore not required to answer the same.

13          13. Answering Paragraph 13 of Plaintiff's Complaint, Answering Defendants deny  
14 the allegations contained therein.

15          14. Answering Paragraph 14 of Plaintiff's Complaint, Answering Defendants are  
16 without knowledge or information sufficient to form a belief as to the truth of the allegations  
17 contained in said paragraph and therefore deny the same.

18          15. Answering Paragraph 15 of Plaintiff's Complaint, Answering Defendants are  
19 without knowledge or information sufficient to form a belief as to the truth of the allegations  
20 contained in said paragraph and therefore deny the same.

21          16. Answering Paragraph 16 of Plaintiff's Complaint, Answering Defendants are  
22 without knowledge or information sufficient to form a belief as to the truth of the allegations  
23 contained in said paragraph and therefore deny the same.

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17. Answering Paragraph 17 of Plaintiff's Complaint, Answering Defendants are without knowledge or information sufficient to form a belief as to the truth of the allegations contained in said paragraph and therefore deny the same.

18. Answering Paragraph 18 of Plaintiff's Complaint, Answering Defendants are without knowledge or information sufficient to form a belief as to the truth of the allegations contained in said paragraph and therefore deny the same.

**FIRST CLAIM FOR RELIEF**

#### **(Violation of Constitutional Rights)**

19. Answering Paragraph 19 of Plaintiff's Complaint, Answering Defendants repeat and reallege their answers to the preceding paragraphs, inclusive, and incorporate the same by reference as though fully set forth herein.

20. Answering Paragraph 20 of Plaintiff's Complaint, Answering Defendants deny the allegations contained therein.

21. Answering Paragraph 21 of Plaintiff's Complaint, Answering Defendants deny the allegations contained therein.

22. Answering Paragraph 22 of Plaintiff's Complaint, Answering Defendants deny the allegations contained therein.

23. Answering Paragraph 23 of Plaintiff's Complaint, Answering Defendants deny the allegations contained therein.

24. Answering Paragraph 24 of Plaintiff's Complaint, Answering Defendants deny the allegations contained therein.

25. Answering Paragraph 25 of Plaintiff's Complaint, Answering Defendants deny the allegations contained therein.

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26. Answering Paragraph 26 of Plaintiff's Complaint, Answering Defendants deny the allegations contained therein.

27. Answering Paragraph 27 of Plaintiff's Complaint, Answering Defendants deny the allegations contained therein.

28. Answering Paragraph 28 of Plaintiff's Complaint, Answering Defendants deny the allegations contained therein.

29. Answering Paragraph 29 of Plaintiff's Complaint, Answering Defendants deny the allegations contained therein.

**SECOND CLAIM FOR RELIEF**

**(Monell Claim)**

#### **(Violation of Constitutional Rights)**

30. Answering Paragraph 30 of Plaintiff's Complaint, Answering Defendants repeat and reallege their answers to the preceding paragraphs, inclusive, and incorporate the same by reference as though fully set forth herein.

31. Answering Paragraph 31 of Plaintiff's Complaint, Answering Defendants deny the allegations contained therein.

32. Answering Paragraph 32 of Plaintiff's Complaint, Answering Defendants deny the allegations contained therein.

33. Answering Paragraph 33 of Plaintiff's Complaint, Answering Defendants deny the allegations contained therein.

34. Answering Paragraph 34 of Plaintiff's Complaint, Answering Defendants deny the allegations contained therein.

35. Answering Paragraph 35 of Plaintiff's Complaint, Answering Defendants deny the allegations contained therein.

36. Answering Paragraph 36 of Plaintiff's Complaint, Answering Defendants deny the allegations contained therein.

37. Answering Paragraph 37 of Plaintiff's Complaint, Answering Defendants deny the allegations contained therein.

38. Answering Paragraph 38 of Plaintiff's Complaint, Answering Defendants deny the allegations contained therein.

39. Answering Paragraph 39 of Plaintiff's Complaint, Answering Defendants deny the allegations contained therein.

**THIRD CLAIM FOR RELIEF**

### **(False Arrest/False Imprisonment)**

40. Answering Paragraph 40 of Plaintiff's Complaint, Answering Defendants repeat and reallege their answers to the preceding paragraphs, inclusive, and incorporate the same by reference as though fully set forth herein.

41. Answering Paragraph 41 of Plaintiff's Complaint, Answering Defendants deny the allegations contained therein.

42. Answering Paragraph 42 of Plaintiff's Complaint, Answering Defendants deny the allegations contained therein.

43. Answering Paragraph 43 of Plaintiff's Complaint, Answering Defendants deny the allegations contained therein.

44. Answering Paragraph 44 of Plaintiff's Complaint, Answering Defendants deny the allegations contained therein.

45. Answering Paragraph 45 of Plaintiff's Complaint, Answering Defendants deny the allegations contained therein.

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46. Answering Paragraph 46 of Plaintiff's Complaint, Answering Defendants deny the allegations contained therein.

47. Answering Paragraph 47 of Plaintiff's Complaint, Answering Defendants deny the allegations contained therein.

## **FOURTH CLAIM FOR RELIEF**

## **(Intentional Infliction of Emotional Distress)**

48. Answering Paragraph 48 of Plaintiff's Complaint, Answering Defendants repeat and reallege their answers to the preceding paragraphs, inclusive, and incorporate the same by reference as though fully set forth herein.

49. Answering Paragraph 49 of Plaintiff's Complaint, Answering Defendants deny the allegations contained therein.

50. Answering Paragraph 50 of Plaintiff's Complaint, Answering Defendants deny the allegations contained therein.

51. Answering Paragraph 51 of Plaintiff's Complaint, Answering Defendants deny the allegations contained therein.

## **AFFIRMATIVE DEFENSES**

Further, as affirmative defenses to each and all of Plaintiff's alleged "causes of action," Answering Defendants allege:

## **FIRST AFFIRMATIVE DEFENSE**

Plaintiff's Complaint on file herein fails to state a claim against Answering Defendants upon which relief can be granted.

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## **SECOND AFFIRMATIVE DEFENSE**

Answering Defendants allege that the damages, if any, suffered by Plaintiff in his Complaint were caused in whole or in part by the negligence of a third party over whom Answering Defendants had no control.

### **THIRD AFFIRMATIVE DEFENSE**

Answering Defendants' actions were reasonable and justified under the circumstances and were privileged.

#### **FOURTH AFFIRMATIVE DEFENSE**

9 At all times mentioned in Plaintiff's Complaint, Answering Defendants acted under the  
10 good faith belief that their actions were legally justifiable.

## **FIFTH AFFIRMATIVE DEFENSE**

12 The arrest and imprisonment of Plaintiff, if any, was completely justified and privileged  
13 under the circumstances alleged and was perfected pursuant to probable cause and reasonable  
14 cause in believing the Plaintiff had committed a criminal act.

## **SIXTH AFFIRMATIVE DEFENSE**

16 There can be no recovery for punitive damages against any government official acting in  
17 his or her official capacity, pursuant to 42 U.S.C. § 1983.

## **SEVENTH AFFIRMATIVE DEFENSE**

19 No award of punitive damages can be awarded against Answering Defendants under the  
20 facts and circumstances alleged in Plaintiff's Complaint.

## **EIGHTH AFFIRMATIVE DEFENSE**

At the time and place alleged in Plaintiff's Complaint, and for a period of time prior thereto, Plaintiff did not exercise ordinary care, caution or prudence for the protection of his own safety, and the injuries and damages complained of by Plaintiff in his Complaint, if any, were

directly and proximately caused or contributed to by the fault, failure to act, carelessness and negligence of Plaintiff.

## **NINTH AFFIRMATIVE DEFENSE**

At all times mentioned in Plaintiff's Complaint, Answering Defendants did not personally participate in any of the Plaintiff's alleged violations of his constitutional rights.

## **TENTH AFFIRMATIVE DEFENSE**

To the extent Plaintiff's causes of actions against Answering Defendants sound in negligence, no recovery can be had predicated upon 42 USC § 1983.

#### **ELEVENTH AFFIRMATIVE DEFENSE**

Plaintiff's suit fails to state claim for relief as he fails to allege a violation of right, privilege, or immunity secured by the United States Constitution or by the laws of the United States.

## **TWELFTH AFFIRMATIVE DEFENSE**

Answering Defendants did not enact or promulgate any policy, statute, ordinance or custom, policy or procedure which denied or abridged any of the Plaintiff's constitutional rights.

## **THIRTEENTH AFFIRMATIVE DEFENSE**

Answering Defendants are qualifiedly immune from the actions alleged against them in Plaintiff's Complaint.

## **FOURTEENTH AFFIRMATIVE DEFENSE**

The Nevada Revised Statutes, chapter 41, limits the damages that may be collectable against a political subdivision of the State of Nevada to seventy-five thousand dollars (\$75,000).

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1                   **FIFTEENTH AFFIRMATIVE DEFENSE**

2                   Answering Defendants are not subject to suit upon the facts and conclusions as stated in  
3 Plaintiff's Complaint by reason of their sovereign immunity as a political subdivision of the State  
4 of Nevada and more particularly by reason of the provisions of NRS 41.031, 41.032, 41.033.

5                   **SIXTEENTH AFFIRMATIVE DEFENSE**

6                   Plaintiff's Complaint concerns a discretionary function of Answering Defendants for  
7 which Answering Defendants are immune.

8                   **SEVENTEENTH AFFIRMATIVE DEFENSE**

9                   The Plaintiff's claims of a constitutional violation are unsupported in both fact and law,  
10 as Plaintiff has not alleged sufficient basis from which a constitutional interest might arise in  
11 conjunction with the alleged actions.

12                   **EIGHTEENTH AFFIRMATIVE DEFENSE**

13                   Pursuant to FRCP 11, all possible affirmative defenses may not have been alleged herein  
14 insofar as insufficient facts were available after reasonable inquiry upon the filing of Plaintiff's  
15 Complaint, and therefore, Answering Defendants reserve the right to amend their Answer to the  
16 Complaint to allege additional affirmative defenses if subsequent investigation so warrants.

17                   WHEREFORE, Answering Defendants pray for judgment as follows:

- 18                   1.       That Plaintiff take nothing by virtue of his Complaint on file herein, and that the  
19                   same be dismissed with prejudice;  
20                   2.       For an award of reasonable attorneys fees and costs of suit incurred in the defense  
21                   of this action;

22                   /././.

23                   /././.

24                   /././.

3. For such other and further relief that this Court may deem just and proper in the premises.

DATED this 28 day of August, 2012.

KAEMPFER CROWELL RENSHAW  
GRONAUER & FIORENTINO

BY:

LYSSA S. ANDERSON (Nevada Bar No. 5781)  
8345 West Sunset Road, Suite 250  
Las Vegas, Nevada 89113  
**Attorneys for Defendants**

**KAEMPFER CROWELL RENSHAW**  
**GRONAUER & FIORENTINO**  
8345 West Sunset Road  
Suite 250  
Las Vegas, Nevada 89113

**CERTIFICATE OF SERVICE**

I, the undersigned, hereby certify that on this date I electronically filed the foregoing  
**DEFENDANTS' ANSWER TO PLAINTIFF'S COMPLAINT** using the court's CM/ECF  
system which will send notification to the following:

5 Cal J. Potter, III, Esq.  
Potter Law Offices  
6 1125 Shadow Lane  
Las Vegas, Nevada 89102  
7 (702) 385-1954  
(702) 385-9081 - facsimile  
8 Attorney for Plaintiff

9 DATED this 28 day of August, 2012.

Janet Weller  
an employee of  
Kaempfer Crowell Renshaw Gronauer & Fiorentino